



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Public Procurement:
Department of Finance and Personnel

14 May 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Ms Michaela Boyle
Mr Leslie Cree
Mr Paul Girvan
Mr Ian McCrea
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Mr Des Armstrong	Department of Finance and Personnel
Mr David Carson	Department of Finance and Personnel

The Chairperson: I welcome Mr Des Armstrong, director of Central Procurement Directorate (CPD) in the Department of Finance and Personnel, and Mr David Carson, the divisional director in CPD. We will move straight to questions, Des, if that is OK.

Mr Des Armstrong (Department of Finance and Personnel): I am happy enough to take questions.

The Chairperson: We have just had an evidence session on procurement with representatives of the Human Rights Commission. It was quite interesting, to say the least. It has corresponded with the Committee to raise a number of concerns. However, it also recognised that CPD has been quite constructive in trying to progress the matter.

Some of the Human Rights Commission's findings are concerning. Its correspondence stated that it had found an:

"inconsistent level of awareness and knowledge regarding the human rights obligations of public authorities amongst procurement personnel."

It continued:

"There is also a notable absence of any reference to human rights duties in the Public Procurement Policy Handbook and the Procurement Guidance Notes."

There are a few other constructive criticisms in the correspondence. Do you recognise that as an area that needs to be developed in Central Procurement Directorate? Is there a need to mitigate any risk for issues such as the abuse of migrant workers, zero-hour contracts, and so on?

Mr Armstrong: We did not really get a chance to look at input into the very helpful report that was produced. However, we are pleased that it has been published. We are always willing to take constructive criticism of how the public procurement process works in Northern Ireland. The criticism seems to be around awareness. We need to look at the documentation in place to see whether it adequately reflects the requirements placed on contractors. Obviously, the European human rights requirements are passed from public bodies to contractors where applicable. We need to look at our documentation to make sure that it is adequately flagged to suppliers when they are in a tendering process, when the contract is being awarded or when we are in contract delivery. We are happy to look at the detail around that.

I think that there is a suggestion in the report that we should bring forward additional legislation to say that there is legislation in place. The mode that we tend to move with is administrative action through the procurement guidance notes. We are always willing to look at those notes to make sure that they are relevant against any aspect of legislation.

The Chairperson: Are there any measures in place at present to check and verify the human rights records of contractors or suppliers, given that you are talking about suppliers from outside the country as well?

Mr Armstrong: The right exists by virtue of the Act already in place. There is already a requirement on contractors when they carry across that responsibility. We tend to try to avoid listing all relevant legislation in our contracts. If you miss an Act, is the contract then covered? We need to look at that aspect, because it has been brought to our attention that we must see whether we need to make it more obvious.

The report references the action plan produced by the UK Government. In that, there is a very helpful list of roles that the UK Government expect from their contractors. We could look at making it more obvious to contractors that they will carry a responsibility for human rights when those issues come across as part of the contract. I am happy to take a look at that.

The Chairperson: Out of interest, have there ever been any human rights investigations by CPD?

Mr Armstrong: We look for feedback on contract performance from a number of areas, such as from clients or interested parties that may come directly to CPD or MLAs. We also have two forums in place that link up with the industry, particularly the construction industry. At times, the trade union representatives on the construction industry forum have raised issues around migrant workers and their pay and conditions. In working with the Construction Employers Federation (CEF), for example, we have been quite clear that that type of behaviour is not acceptable. However, when such allegations are made, it has been difficult for us to get the evidence to allow us to do a complete and thorough investigation. The signals that we are sending out are that, in Northern Ireland, we expect contractors and suppliers to be bona fide suppliers. We expect them to have a particular culture that supports economic development in Northern Ireland and that treats people properly as part of that.

The Chairperson: You said that there is sometimes a difficulty with getting evidence to prove the allegations. Does that, in itself, flag that there is more work to be done in the area by CPD?

Mr Armstrong: That type of evidence base is something that comes up in a number of areas, such as prompt payment or payments being withheld by the main contractor. There is a perception that, if an issue is flagged, it may prevent other business being given to not the public sector but the private sector. We are always willing to make sure that we put legislation in place where it is required. For example, we do that through the construction order that we put in place on payments and contracts, and by taking feedback directly from organisations and then going off and investigating using that information.

Mr Mitchel McLaughlin: How are you, Des? Good to see you again. We have had correspondence from the Construction Employers Federation raising concerns about the portal, the tracking system and how up to date the information is. The federation gave us some examples. Has that been brought to your attention, and, if it has been, did you find the complaints valid?

Mr Armstrong: The issue around the investment strategy for Northern Ireland (ISNI) tracking system is one that has been brought to our attention by a number of bodies, including the Construction Industry Forum. The purpose of the portal was to give the industry information on where the jobs are

and at what particular stage they are in the process. I think that it is quite effective that that information is in place. The information comes on to the system through the Departments or the particular client that has it in place.

What are we doing about it? You may be aware that the Minister of Finance has set up a procurement board subgroup to look at the delivery of infrastructure. One of the areas that we are looking at is how we can bring information to the construction industry about forward workload, or, as the industry calls it, the pipeline of projects. We are drafting some proposals that will go to the procurement board when it meets on 11 June.

Mr Mitchel McLaughlin: OK. I am glad that it is extant. What the CEF said was that the portal has failed to be of any particular benefit to the industry because the information on the portal is incomplete and at times unreliable or lacking in detail. It gave some examples dated 11 February this year that show construction contracts that are pre-procurement. Of the 51 projects listed, only 25 gave a date for when they were to be in procurement. Some 31 of the projects listed are schools. Only 20 other projects are listed across all the other Departments. Of the six DFP projects that are listed, only one has a date for when it will be in procurement, which is the quarter ending September 2013. Only one Housing Executive contract is listed, and the correspondence states that it is due to be in procurement in the quarter ending June 2011. Is there anybody looking at the portal at all?

Mr Armstrong: The criticism is demonstrated by the fact that, when you look at the projects, the information is not there. That is a fault not of the system but of those who put the information on the system. We have to do a bit of work to make sure that that happens. As I mentioned, we are looking at proposals that will strengthen the requirement to put the information in place. When we create the systems, a lot of the fields that are created to gather up information are not mandatory. Therefore, someone inputting information can make the choice not to put in a date. We have been working on, for example, the e-tendering system that we are putting in place to make more of the fields mandatory so that we can collect the information that we need as people do their job.

There is probably a mixture of reasons that some of the details are not being put on, as far as I understand it, depending on whether commitments are being given or can be given, whether commitments have changed or whether there are presentational issues around some of the projects. I can tell you that, at the moment, we are looking at a set of measures that might strengthen the material on the portal.

Mr Mitchel McLaughlin: Why would you have information on June 2011 or September 2013? It is useless to anybody, is it not? Why would you put on projects that are pre-procurement but do not have a date reference? What do you do about that? That is only taking up space. Who took the time to put information such as that on?

Mr Armstrong: Apart from that system, there are other dialogues and information exchanges that go on for projects. For example, there is a regular meeting with the bodies that are involved in civil engineering, such as the Construction Employers Federation. Quite detailed information is given about where particular projects are or when they are likely to come. Obviously, all of that information has to be on the basis that things can change. There needs to be information at two levels. There needs to be the high-level information that there would be in the tracking system, which the general public is entitled to see. We also need to sit down with the industry more regularly and say, for example, "Here are the contracts that we have let in the last three months; here is the stuff that we already have in procurement; and here is the stuff that looks as though it will come into procurement processes at some time". It is about getting that information out more widely to the construction industry as well. Information is needed at both levels. I accept the criticism that the current tracking system is not terribly useful.

Mr Mitchel McLaughlin: They are pointing out the problems. Obviously, there is useful and relevant information there as well that people can benefit from. They draw a very wide conclusion that it is of no benefit, which I suspect is probably just an expression of frustration more than anything else. Surely, we can deal with the causes of those frustrations. Out-of-date information should just be discarded or reviewed periodically. Pre-procurement, where dates are not relevant, is really of no value other than to put people on notice that there is such a project in the current financial year. You are not actually asking anybody to sit up at night and start developing a tender document. However, where you have dates, that is information that means something to people who have responsibility for business, employment and so on.

Mr Armstrong: If we put any information into the public domain, it needs to be valid. That is my view. We are happy to look at whether we need to back it up with one of our procurement guidance notes that carry some weight.

Mr Mitchel McLaughlin: I have a whole lot of notes, but that is me finished. Thanks very much.

The Chairperson: With regard to the social clauses, Des, obviously we received figures for 2012-13. There seems to be some interesting comparisons. When you look at the 2008-2012 figures, you see that they cannot be separated. There is reference to the number of training places. There is also discussion about training places that are engaged and training places that are offered. It is almost like Invest NI language, with respect. I think that those figures could be a lot clearer for the Committee to look at. However, there is concern that, with regard to social clauses, it appears that the number of engaged places is beginning to slide. Is that a fair comment?

Mr Armstrong: The numbers that we have from the construction COPEs are improving. We have some information issues coming from supplies and services. David, as you collected the information, do you want to touch on that?

Mr David Carson (Department of Finance and Personnel): We are into the second year now of monitoring the uptake of social clauses. It is clear that, when we ask Departments for the information, there is not always clarity in what is provided. The quality of the information coming back and the assurance that we can attach to it is not very high. So, that is something that we are actively looking at with Departments at present. That is across all supplies and services and construction contracts.

However, on the construction side, as Des said, we have implemented specific measures that are designed to try to capture the social clauses in those contracts. Those are much more detailed. We require quarterly reports to cover every contract over £30,000. We have just got returns in for the first quarter of the current year. The picture that they present is quite positive. It certainly outstrips the figures for 2012-13. For example, with regard to training opportunities, we have 78 schemes identified and almost 3,000 weeks of training. There are 12 schemes with 228 weeks of student placements. There are 83 work experience schemes with 8,500 weeks. We intend to track those commitments across the life of those contracts. This follows on from the commitments that the Minister made some time ago regarding the construction area on a number of issues. Social clauses were one of those; prompt payment was another.

The Chairperson: I wonder whether the Committee could have a degree more transparency on social clauses. Not that you are concealing information, but we could receive more information on a regular basis. I think it might have been the Construction Employers Federation that suggested that the Committee be updated on social clauses on a quarterly basis. If we had an overview of where the social clauses are, what Department they are in and what major contracts are under way so that we can see which contracts are fully engaged in social clauses and which are not — if we had that holistic view — it would better inform our engagements with the Department.

Mr Carson: We intend to bring figures to the procurement board in June, which will set out the position regarding Departments, although I think they will also flag up the difficulties that I referred to earlier. I do not see any problem in letting the Committee have that information. On the construction side, we are getting that information from centres of procurement expertise, so we can attach a fair degree of assurance to those numbers. We will also give you that level of detail.

The Chairperson: Do you know, just off the top of your head, where the 33 trainees mainly fall within that?

Mr Carson: Is that for 2012-13?

The Chairperson: Yes.

Mr Carson: Those figures have not been subject to full validation. I have to say that there is a fairly significant health warning attached to those. Those figures came from Departments. We have not drilled down to find out what lies behind those numbers, but, from the figures that are now coming forward on the construction contracts, we believe that they could well be understated, and maybe quite significantly.

Mr Cree: Good morning, gentlemen. Good payment practice used to be called prompt payment practice. Is there any reason for the change?

Mr Armstrong: I do not think so. "Good" and "prompt" would both be applicable. That is probably down to drafting —

Mr Cree: So long as it is not either one, eh?

Mr Armstrong: Proper payment is something that we are really focused on. We made very clear in the conditions of contract that it is not only an issue for Departments picking a main contractor but that we want to see proper payment practice within the supply chains.

Mr Cree: It has been a long-running thing, as you know, Des. In fact, unfortunately, I think a lot of subcontractors were forced out of business before the Department really took it on board. I am just a little bit concerned now about how effective it really is. For example, recently, on the time taken to approve bills, we were told that 10 days is fine, but then we found out that, in many cases, there was a long lead time, that being the time taken to approve the invoices. Has that been sorted out yet?

Mr Armstrong: We need to make sure that payments are progressed promptly and properly and that, once those are processed and there is an agreed invoice, that is paid promptly as well. I think that message is quite clearly out there. Although we have a policy remit and are involved in the procurement process for a smaller number of bodies, I am quite clear that, in my organisation, everybody understands that it is in the interest of economic development and the suppliers to make sure that the payment process, whether it is a disputed invoice or not, is cleared up and paid promptly and correctly.

Mr Cree: Do you think that message has been inculcated in the rest of the Civil Service?

Mr Armstrong: That is the message that we are putting out. Again, we do not have monitoring arrangements that go across into that, but the feedback that I have had directly from industry on the approach taken by the CPD is that, when we ask our project managers or contract managers to be actively interested in the payment practices of the main contractor and ask for a demonstration and information that that takes place properly, or for any issues to be flagged up about the agreement of invoices, the processes that CPD has in place make the system work. Our systems work on the basis that it is an important issue that needs to be properly addressed. That is the feedback that I get directly from the industry.

Mr Cree: So, you are saying that it is being carefully monitored, Des.

Mr Armstrong: Yes. I am quite clear to my project managers and contract managers that this is the way that we want to do business. We want to do business quickly and swiftly with the main contractors, and we expect them to be in the same sort of mode with their subcontractors.

Mr Cree: Are project bank accounts an improvement?

Mr Armstrong: It is another lever regarding the focus and creating a culture where payment moves through the system. There is obviously the additional benefit of what might happen if a liquidation or administration issue arises. There is a bit more of an issue around that. That said, it depends where you sit about whether you think that is a good thing or not. If you are a contractor, you might feel that your cash flow is going to be impacted by that type of arrangement, which might not be as good.

We are taking forward a number of projects on a pilot basis. We are looking very carefully, as we go along instead of waiting until that contract is completed, at what issues might arise in a particular application of that and learn from them. Ideally, we want a situation where the culture is that you are paid quickly, any disputed invoice is resolved quickly and paid properly, the payment process puts the invoice through quickly and the money flows into the economy through the main contractors or suppliers, which is passed on quickly to their suppliers and subcontractors. That is the ideal situation.

If project bank accounts become established and are seen by all parties to be working effectively, we can move them forward. The feedback so far has been positive, but we need to test a few more projects, including some larger ones. That is why we have agreed with the other COPEs that they will each take forward a trial project so that we can test that application across the various systems.

Mr Cree: Just to show you that we are up to date: there is an emerging issue about the cost of payment. Will you comment on that?

Mr Armstrong: Do you mean the cost of setting them up?

Mr Cree: The cost of making the payment. There were figures in play this morning that I heard on the news.

Mr Armstrong: I cannot comment on the payment process. That is not my area.

The Chairperson: Some of the project bank accounts must have been going for quite a time. Are there any early indicators of how smoothly they are going?

Mr Armstrong: The smaller pilots that we were taking forward seem to be working OK. We would like to test them with utility and roads projects. Those are being set up. We agreed that we will go back to the construction industry, for example, to give it direct feedback on those projects that we have in place. That will happen at the meeting in September.

We will be doing a bit of a review through the summer so that we can have quite an open debate with the construction industry on what we have picked up in our projects, and we will be asking for the alternative view, if there is one.

Ms Boyle: Thank you for your presentation. On the rationale for maintaining the existing COPE structures, the Committee recommended that the criteria used in the accreditation of COPEs should take into account the robustness and effectiveness of the systems. That recommendation has been accepted. Where is that at the minute? How has it been implemented?

Mr Armstrong: Regarding the accreditation process?

Ms Boyle: Yes.

Mr Armstrong: We have tested the COPEs against the accreditation model. That took place earlier this year. The procurement board will decide whether the individual bodies retain COPE status. Three independent experts were brought in to carry out a gateway review style overview of the submissions that were made by the COPEs for that model. They were presented with quite detailed documentation on how a particular COPE approached the particular issues in the accreditation model.

It is for the procurement board to decide whether a particular body retains its COPE status. For the two COPEs that are within CPD, we went through the accreditation process with just a few recommendations that we found useful to help us improve. I am hoping that the procurement board will retain our status as a COPE when it meets in June. I cannot talk about the other bodies.

Ms Boyle: Standardised reporting across the public sector is now going to be implemented in autumn 2014. I see your acceptance of that recommendation. You state in the submission:

"The new system should be available for Autumn 2014."

Is that on track?

Mr Armstrong: Is that the e-tendering system?

Ms Boyle: Yes.

Mr Carson: We have awarded a contract for that system. The intention is that all COPEs will be operational in the new system by the end of October this year. The other public bodies currently using e-sourcing will be brought on after that. The period through to the end of January 2015 is when we hope to make it available. Any other body not using electronic procurement will come on after that. We are configuring the system to meet our requirements.

Ms Boyle: Are there many not using it that will move over?

Mr Carson: It is difficult to say. There are certainly a number of bodies. They tend to be smaller in size. The majority of procurement spending lies with central government, the COPEs or the local authorities. All the COPEs will use it. We are hopeful that a substantial proportion of, if not all, the local authorities will also use the system. We are developing functionality that should make it more attractive to smaller bodies to use. We have a quick quotes-type mechanism for lower-value contracts that will streamline the process for those procurements. It should take some of the maybe perceived bureaucracy away. We hope that bodies out there will be encouraged to come onboard.

Ms Boyle: Is there a specific piece of work with SMEs to encourage them to go over?

Mr Carson: Yes. A communications programme is being put in place to inform suppliers that the new system will be coming on stream and to inform them of what they need to do to register on it. That will be done on a face-to-face basis. We will also put out regular bulletins. As I said, at this stage, it is relatively early. We are still configuring the system to meet our requirements. That will kick in probably during the summer, and we will start to warm them up to the new system.

Mr Weir: Thanks for your evidence so far. There has been a wee bit of criticism from the CEF on the issue of the balance between getting best value in a tender and simply getting lowest cost. Its concern is that there is still movement towards lowest cost. That is perhaps understandable in a situation in which money is tight, but it is a bit concerned that the balance is not right. Will you respond to that? It made reference to the recommendations about the use of the most economically advantageous tender (MEAT), but it is concerned about the commitment to that. Commitment is all very well, but the implementation of that has been quite slow. There has not been an appropriate speed in fully implementing that and getting it dealt with. How do you respond to those criticisms?

Mr Armstrong: On the balance of quality and price, we have been quite clearly pushing MEAT as the preferred way forward. That causes some issues when you move into low-value procurements, because you then have to require the tenderers to produce quality documentation. The issue we discussed with the industry was about the point at which that does not add value. If you were looking at a relatively small contract and you want to encourage new entrants into the market and new SMEs to come along, one of the barriers is about how they make their pitch and presentation on the quality thing. We have had feedback that that becomes the essay writing competition.

We spent a fair bit of time in discussion with the construction industry, and we came to a conclusion that above-the-European-threshold contracts were sizeable enough to be able to stand that degree of scrutiny of what a contractor would tell you it could do in respect of providing you with a quality job and of their quality experience of that. Then, we looked at a graduated approach as we went down the values. We were firmly of the position that we did not want the lowest price. None of our documentation talks about that, but, in low value stuff, we saw an opportunity to go for what we call the lowest acceptable price. That means that we would look at the prices submitted in the tendering process and not take a price that looked like it was subeconomic. So, we produced guidance along with the construction industry that rules out —

Mr Weir: The Construction Employers Federation has expressed concern that there has been slippage in the timetable of issuing that guidance. According to the information that we have, the CEF was originally told that the guidance would be there in 2013, then it was to be March 2014, and, when it wrote to us most recently, no guidance had been issued. Where are we with the guidance? What is the timetable for that?

Mr Carson: That may relate to the above-threshold position. The Construction Employers Federation was concerned that MEAT would not be applied to above-threshold competitions, as a result of putting in the change in approach for below-threshold procurements. We have recognised that there was a need to clarify that position in the guidance. That has been done.

Mr Weir: Has the guidance been issued?

Mr Carson: The guidance was already there. I think the Construction Employers Federation's concern was that it was not sufficiently specific about the approach to be adopted for above-threshold competitions. We have provided that clarification in the existing guidance; that was done in April. We agreed the wording with the Construction Employers Federation in advance of that.

Mr Weir: One of the problems on this is that there seems to be a wee bit of a communication issue. You are saying that the guidance was already there, that the wording had been agreed and that it was, effectively, there from April onwards, but the CEF has indicated to us in writing that, as of Monday of this week, the guidance was not there. There seems to be a mismatch.

Mr Carson: Maybe we are talking at cross purposes; maybe it is referring to something else.

Mr Armstrong: We will certainly check to find out. The first guidance note that we produced on the basis of award of control limits, which changed the business around lowest acceptable price, was produced in 2012. So, we had guidance in place. The issue is that the Construction Employers Federation felt that, in some sectors, it may have used that loose drafting — I suppose I could call it that — to allow it to move forward more aggressively on a lowest-price basis. That is a specific sector issue, rather than a general issue across the rest of the COPEs. The Construction Employers Federation was concerned that that might be seen as opening the door to this approach being brought forward, but we are quite clear: we believe that the best way to achieve quality construction projects at a good price, in above-threshold projects, is with the use of MEAT.

The Chairperson: There are no other questions; members are happy enough. Des and David, thank you very much.